

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

This motion is made pursuant to the Court's inherent sanction power and Fed.R.Civ.P. 37(c), on the ground that HipSaver produced an altered financial database and a new 2006 Excel spreadsheet after the deadline for pre-trial disclosures, the financial database being substantially altered from the financial database produced during discovery. This conduct violates Fed. R. Civ. P. 26(a), 26(e)(1), 26(e)(2) and is to Posey's extreme prejudice.

Dated: June 6, 2007

J.T. POSEY COMPANY

By its attorneys,

/s/ Anthony J. Fitzpatrick  
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**CERTIFICATE PURSUANT TO LOCAL RULE 7.1**

I hereby certify that on June 5, 2007, Douglas Morseburg conferred with counsel for HipSaver by telephone in a good faith attempt to resolve or narrow the issues presented by the instant motion, but was unable to do so.

Dated: June 6, 2007

/s/ Anthony J. Fitzpatrick  
Anthony J. Fitzpatrick

**CERTIFICATE OF SERVICE**

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

Dated: June 6, 2007

/s/ Anthony J. Fitzpatrick  
Anthony J. Fitzpatrick